

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERTO MENDEZ-SANCHEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C10-440 MJP-JPD

ORDER

The Court has reviewed Petitioner's motion for relief under 28 U.S.C. § 2255, the Report and Recommendation of Judge James P. Donohue, United States Magistrate Judge, Petitioner's objections (Dkt. No. 12.), and the remaining record.

Magistrate Judge Donohue recommended that the Court deny Petitioner's § 2255 motion and dismiss with prejudice because Petitioner failed to demonstrate his counsel rendered ineffective assistance. (Dkt. No. 11.) Based on the record, Petitioner's counsel clearly advised him of the more favorable option of pleading guilty without cooperating with the government (CR06-425 MJP, Dkt. No. 854, at 3, 13-14, 19-20; Dkt. No. 829, at 3, 7-8) and Petitioner's counsel had no reason to request a medical evaluation based on Petitioner's behavior during plea

1 negotiations and trial (Id., Dkt. No. 829 at 6.) Petitioner objects on the ground that his refusal of
2 the plea offer and failure to cooperate with his counsel was so irrational that his counsel should
3 have ordered a medical evaluation. (Dkt. No. 12.)

4 The Court finds Petitioner's objections lack merit. In his objections, Petitioner relies on
5 Moran v. Godinez, which recognized the state court erred in not calling for a competency
6 hearing. 40 F.3d 1567, 1571 (9th Cir. 1994). In that case, however, Mr. Moran was known to be
7 on medication and suicidal. Id. Here, Petitioner's decision not to accept the plea offer may seem
8 imprudent after-the-fact but it did not demonstrate an incompetence necessary of medical
9 evaluation. The Court does hereby find and ORDER:

10 (1) The Court adopts the Report and Recommendation.

11 (2) Petitioner's motion for relief under 28 U.S.C. § 2255 (Dkt. No. 1) is DENIED
12 and this matter is DISMISSED with prejudice.

13 (3) In accordance with Rule 11(a) of the Rules Governing Section 2255 Cases in
14 the United States District Courts, a certificate of appealability is DENIED
15 with respect to each of the two ineffective assistance of counsel claims
16 asserted by Petitioner in his § 2255 motion.

17 (4) The Clerk is directed to send copies of this Order to Petitioner, to the United
18 States Attorney, and to Judge Donohue.

19 Dated this 13th day of October 2010.

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23 Marsha J. Pechman
24 United States District Judge